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8 and ALEC PETERS

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11
12 PARAMOUNT PICTURES
CORPORATION, a Delaware
13 corporation; and CBS STUDIOS INC., a
Delaware corporation,

14 Plaintiffs,

15 vs.

16 AXANAR PRODUCTIONS, INC., a
17 California corporation; ALEC PETERS,
an individual; and DOES 1-20,

18 Defendants.
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Case No. 2:15-cv-09938-RGK-E

Assigned to: Hon. R. Gary Klausner

**DEFENDANTS AXANAR
PRODUCTIONS, INC., AND ALEC
PETERS' EVIDENTIARY
OBJECTIONS TO THE
DECLARATION OF DAVID
GROSSMAN IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Date: 12/19/16
Time: 9:00 a.m.
Place: Courtroom 850, 8th Floor
255 East Temple Street
Los Angeles, CA 90012
Judge: Hon. R. Gary Klausner

1 Defendants Axanar Productions, Inc. and Alec Peters (“Defendants”) hereby
 2 submit the following objections to the Declaration of David Grossman that was
 3 submitted in support of Plaintiffs’ Motion for Partial Summary Judgment (“Grossman
 4 Declaration”).

5 **I. Paragraphs 8, 10-97 of the Grossman Declaration are Inadmissible**

6 Various portions of the Grossman Declaration are inadmissible under the
 7 Federal Rules of Evidence, as set forth below. Evidence submitted in support of
 8 summary judgment motions must be admissible. *Beyene v. Coleman Sec. Servs., Inc.*,
 9 854 F.2d 1179, 1181-82 (9th Cir. 1988). In order to be admissible, evidence must be
 10 (1) relevant to the claims or defenses of the case (Fed. R. Evid. 401, 403); (2) based
 11 on personal knowledge of the witness (Fed. R. Evid. 602); (3) non-hearsay (Fed. R.
 12 Evid. 801 and 802); and (4) testimony that requires scientific, technical, or other
 13 specialized knowledge can be provided only by an expert witness with the requisite
 14 knowledge, skill, experience, training, or education (Fed. R. Evid. 701, 702). Opinion
 15 testimony of laypersons is in admissible. *Id.*

| | Evidence | Objection |
|--|--|---|
| 1. 18 19 20 21 22 23 24 25 26 27 28 | Grossman Decl. ¶¶ 8, 20, 25, 48, 50 | <u>Fed. R. Evid. 401, 403</u> Mr. Grossman’s statements regarding Mr. Peters’ purported failure to produce emails, text messages, and every public social media postings is irrelevant. Defendants’ document collection and production is not at issue in Plaintiffs’ Motion for Partial Summary Judgment, and Plaintiffs’ discovery-related complaints reflect only their own failure to raise any of these issues in a timely manner. <i>See</i> 10/31/16 Order Denying Plaintiffs’ <i>Ex Parte</i> Application (Dkt. 68) (“Except as expressly stated herein, [Plaintiffs’ <i>Ex</i> |

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| | | <p><i>Parte</i> Application] is denied. The Discovery Cut-Off Date is November 2, 2016. See Minute Order, filed May 9, 2016. Notwithstanding the issues Plaintiffs have raised regarding the adequacy of Defendants' document productions...the Court will not require at this late date the effective recommencement of document searches, reviews, and productions.”).</p> |
| 2. | <p>Grossman Decl. ¶¶ 10-97</p> | <p><u>Fed. R. Evid. 602, 801, 802</u> Mr. Grossman’s summary of the content of deposition transcripts, documentary evidence, and the pleadings in this case all lack foundation, are argumentative, are improper legal opinion, are not based on personal knowledge, misstate the evidence, and constitute inadmissible hearsay that is not subject to any applicable exception.</p> |
| 3. | <p>Grossman Decl. ¶¶ 13-14</p> | <p><u>Fed. R. Evid. 401, 403</u> Mr. Grossman’s statements regarding <i>Star Trek: The Role Playing Game</i> and <i>The Four Years War</i> are irrelevant because neither are claimed to be infringed by Defendants in this case. See Defendants’ Responses to Plaintiffs’ Interrogatory Nos. 2-5 (listing various <i>Star Trek</i> motion pictures and television series episodes as the allegedly infringed works); see also FAC, Appendix A (list of allegedly infringed works does not include <i>Star Trek: The Role Playing Game</i> or <i>The Four Years War</i> supplement).</p> |
| 4. | <p>Grossman Decl. ¶ 21</p> | <p><u>Fed. R. Evid. 401, 403, 602, 801, 802</u> Mr. Grossman’s summary of a third party witness’</p> |

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| | | testimony that <i>Prelude to Axanar</i> “infringes upon Plaintiffs’ copyrights” lack foundation, are not based on personal knowledge, is an improper legal conclusion, and constitutes inadmissible hearsay that is not subject to any applicable exception. Nor is the opinion of a third party regarding infringement relevant. |
| 5. | Grossman Decl. ¶¶ 48-57 | <u>Fed. R. Evid. 401, 403</u> Mr. Grossman’s statements that Defendants “created a ‘professional’ work” lack relevance. |
| 6. | Grossman Decl. ¶ 88 | <u>Fed. R. Evid. 401, 403, 602, 801, 802</u> Mr. Grossman’s statement that Mr. Peters “is a lawyer by training” is irrelevant, lacks foundation, and constitutes inadmissible hearsay that is not subject to any applicable exception. |
| 7. | Grossman Decl. ¶¶ 90-96 | <u>Fed. R. Evid. 602</u> Mr. Grossman’s statements regarding Plaintiffs’ purported copyright registrations and Plaintiffs’ works lack foundation and are not based on personal knowledge. |

Dated: November 28, 2016

WINSTON & STRAWN LLP

By: /s/ Erin R. Ranahan
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